SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 514

D. B. HEINER, COLLECTOR OF INTERNAL REVENUE, 23D DISTRICT OF PENNSYLVANIA

vs.

JOHN R. DONNAN, SIDNEY B. DONNAN, ALVAN E. DONNAN, ET AL., ETC.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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In United States Circuit Court of Appeals for the Third Circuit

D. B. Hemmer, Collector of Internal Revenue, 23d District of Pennsylvania, Pittsburgh, Pennsylvania, appellant

vs.

John H. Donnan, Sidney B. Donnan, Alvan E. Donnan, and Dorothy D. Whitworth, Executors and Trustees of the Estate of John W. Donnan, Deceased, of Washington, Pennsylvania, appellees

Appeal from a Judgment of the District Court of the United States for the Western District of Pennsylvania

Before Woolley and Davis, Circuit Judges, and Johnson, District Judge

Filed Nov. 9, 1931

CERTIFICATE TO THE SUPREME COURT

In order that it may properly decide this case, the Circuit Court of Appeals for the Third Circuit desires the instruction of the Supreme Court. Therefore, under authority of section 239 of the Judicial Code (U. S. C. A., title 28, section 346), it certifies two questions of law which arise from the following facts:

Statement of facts

On March 1, 1927, John W. Donnan transferred by indenture $1,700,000 of securities to trustees for his four children. The transfer was a complete and irrevocable gift inter vivos and without consideration.

On September 15, 1927, he advanced $32,500 to a son, also without consideration.

John W. Donnan died on December 28, 1928. His executors filed an estate-tax return and reported for information purposes the said transfer and advancement. The Commissioner of Internal Revenue found that the value of the properties so transferred and advanced was, at the time of the donor's death, $3,900,863.26 and $32,500, respectively, and assessed an additional estate tax of $294,-196.35. He determined this additional tax by including in the gross estate of decedent the value of the properties transferred and advanced, in excess of the statutory exemption, on authority of the second sentence of section 302 (c) of the revenue act of 1926 (44 Stat. 70, ch. 27; U. S. C. Supp. IV, title 26, section 1094), which, without regard to what the fact may be, provides that "such trans-

fer or transfers (made by a donor within two years prior to h
death [shall be deemed and held to have been made in contempl
tion of death * * *." The executors paid the collector $47
723.87, being twenty per centum of the additional tax and inter
and the balance, being eighty per centum thereof, to the Comm
wealth of Pennsylvania. After claim for refund and its rejecti
the executors instituted this action in the District Court of the Uni
States for the Western District of Pennsylvania to recover
$47,723.87, paid as a Federal estate tax, and interest. The
was tried to the court without a jury. The trial court found as
that neither the transfer in trust nor the advancement was made
contemplation of death, and held the second sentence of sec
302 (c) of the revenue act of 1926 unconstitutional because violat
of the due process clause of the fifth amendment, and also
because repugnant to other sections of the act. From a judgm
for the executors for the full amount of their claim the colle
appealed, raising two questions of law concerning which this co
desires the instruction of the Supreme Court.

Questions certified.

1. Does the second sentence of section 302 (c) of the revenue
of 1926 violate the due process clause of the fifth amendment to
Constitution of the United States?

3 2. If the answer to the first question be in the negativ
the second sentence of section 302 (c) of the revenue act
1926 void because repugnant to sections 1111, 1113 (a), 1117,
1122 (c) of the same act?

VICTOR B. WOOLLEY,
Circuit Judge.
J. WARREN DAVIS,
Circuit Judge.
ALBERT W. JOHNSON,
District Judge.

[File indorsement omitted.]

4 [Clerk's certificate to foregoing certificate omitted in printing.]

[Indorsement on cover:] Enter Attorney General. File No. 36
U. S. Circuit Court of Appeals, Third Circuit. Term No. 514.
Heiner, Collector of Internal Revenue, 23d District of Pennsylva
vs. John H. Donnan, Sidney B. Donnan, Alvan E. Donnan, et al.
On certificate. Filed November 11, 1931. File No. 36828.

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